

SENATE, No. 2394

[Senate, April 26, 2010 – Substituted new draft from the committee on [Ways and Means](#) for Senate, No. 2355.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

AN ACT TO STABILIZE NEIGHBORHOODS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect forthwith the citizens and neighborhoods of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

- 1 **SECTION 1.** The second paragraph of subclause (e) of Clause Third of section 5 of
- 2 chapter 59 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by
- 3 adding the following sentence:-
- 4 In any city or town that accepts this paragraph, any real estate owned by or held in trust for a
- 5 charitable organization for the purpose of creating community housing, as defined in section 2 of
- 6 chapter 44B, and that was purchased from an entity that acquired the property pursuant to section

14 of chapter 244 shall be exempt until such real estate is leased, rented, or otherwise disposed of, but not for more than 7 years after such purchase.

SECTION 2. Chapter 167E of the General Laws is hereby amended by inserting after section 7 the following section:-

Section 7A. (a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Mortgagor”, an applicant for a reverse mortgage who: (1) has a gross income of less than 50 per cent of the area median income, as periodically determined by the United States Department of Housing and Urban Development and (2) possesses assets, excluding a primary residence, valued at less than \$120,000.

“Reverse Mortgage”, a nonrecourse consumer credit obligation in which: (1) a mortgage, deed of trust, or equivalent consensual security interest securing 1 or more advances is created in the consumer’s principal dwelling located in the commonwealth; and (2) any principal, interest or shared appreciation or equity is due and payable, other than in the case of default, only after: (i) the consumer dies; (ii) the dwelling is transferred; or (iii) the consumer ceases to occupy the dwelling as a principal dwelling.

(b) No mortgagee who makes a reverse mortgage loan to a mortgagor shall make a reverse mortgage loan unless: (i) the mortgagor affirmatively opts in writing for the reverse mortgage and; (ii) at or before the closing of any reverse mortgage loan the mortgagee has received written certification from a counselor with a third-party organization that the mortgagor has received counseling in person on the appropriateness of the loan transaction from the third party organization and has completed an approved counseling program offered by the third party

organization; provided, however, that the third party organization shall have been approved by the executive office of elder affairs for purposes of such counseling. A mortgagee's failure to receive (i) a written statement from the mortgagor affirmatively opting for the reverse mortgage, or (ii) certification from a counselor approved by the executive office of elder affairs, or both, shall render the terms of the reverse mortgage unenforceable. The commissioner shall adopt regulations to administer and implement this section, and to further define the terms used in this section.

SECTION 3. Chapter 171 of the General Laws is hereby amended by inserting after section 65C the following section:-

Section 65C½. (a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Mortgagor”, an applicant for a reverse mortgage who: (1) has a gross income of less than 50 per cent of the area median income, as periodically determined by the United States Department of Housing and Urban Development and (2) possesses assets, excluding a primary residence, valued at less than \$120,000.

“Reverse Mortgage”, a nonrecourse consumer credit obligation in which: (1) a mortgage, deed of trust, or equivalent consensual security interest securing 1 or more advances is created in the consumer's principal dwelling located in the commonwealth; and (2) any principal, interest or shared appreciation or equity is due and payable, other than in the case of default, only after: (i) the consumer dies; (ii) the dwelling is transferred; or (iii) the consumer ceases to occupy the dwelling as a principal dwelling.

(b) No mortgagee who makes a reverse mortgage loan to a mortgagor shall make a reverse mortgage loan unless: (i) the mortgagor affirmatively opts in writing for the reverse mortgage and; (ii) at or before the closing of any reverse mortgage loan the mortgagee has received written certification from a counselor with a third-party organization that the mortgagor has received counseling in person on the appropriateness of the loan transaction from the third party organization and has completed an approved counseling program offered by the third party organization; provided, however, that the third party organization shall have been approved by the executive office of elder affairs for purposes of such counseling. A mortgagee's failure to receive (i) a written statement from the mortgagor affirmatively opting for the reverse mortgage, or (ii) certification from a counselor approved by the executive office of elder affairs, or both, shall render the terms of the reverse mortgage unenforceable. The commissioner shall adopt regulations to administer and implement this section, and to further define the terms used in this section.

SECTION 4. Chapter 183 is hereby amended by striking out section 67 and inserting in place thereof the following:-

Section 67. No mortgagee shall make a reverse mortgage loan on residential property except in accordance with the provisions of sections 7 and 7A of chapter 167E. For the purposes of this section, the term "residential property" shall mean a 1-to-4 family dwelling owned and occupied in whole or in part by the mortgagor and located in the commonwealth.

SECTION 5. Section 13A of chapter 186 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "law", in line 6, the following

words:- and the foreclosing entity shall assume the lease and rental subsidy contract with the rental subsidy administrator.

SECTION 6. The General Laws are hereby amended by inserting after chapter 186 the following chapter:-

CHAPTER 186A.

TENANT PROTECTIONS IN FORECLOSED PROPERTIES

Section 1. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

”Entity”, an organization, including, without limitation, a business organization, a corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture, sole proprietorship, or any other category of organization, and any employee, agent, servant or other representative of such entity.

”Eviction”, any action, without limitation, by a foreclosing owner of a housing accommodation which is intended to actually or constructively evict a tenant or otherwise compel a tenant to vacate such housing accommodation.

”Foreclosing owner”, a person or an entity that holds title, in any capacity, directly or indirectly, whether in its own name, as trustee, as beneficiary, or in any other manner, to a housing accommodation that has been foreclosed upon, and either: (1) held or owned a mortgage or other security interest in the housing accommodation at any point prior to the foreclosure of the housing accommodation or is the subsidiary, parent, trustee, or agent of, or otherwise is related to, any entity which held or owned the mortgage or other security interest in the housing

accommodation at any time prior to the foreclosure of the housing accommodation; or (2) is an institutional mortgagee that acquired or held title to the housing accommodation within 3 years of the filing of a foreclosure deed on the housing accommodation.

”Foreclosure”, an action to terminate a mortgagor's interest in property, instituted by the mortgagee, either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property; provided, however, that foreclosure shall include, but not be limited to, foreclosure by auction, by bill in equity, by entry and continuation of possession for 3 years, or by sale under the power of sale in a mortgage as described in chapter 244.

“Housing accommodation”, a building or structure, or part thereof or land appurtenant thereto or any other real or personal property used, rented or offered for rent for living or dwelling purposes, together with all services connected with the use or occupancy of such property.

“Just Cause”, a situation in which one or more of the conditions in clauses (a) to (f), inclusive, exists; provided, however, that just cause shall not exist unless the foreclosing owner, within 30 days of the foreclosure: (i) posts in a prominent location in the building in which the rental housing unit is located a written notice (1) stating the name, address and telephone number of the foreclosing owner, the building manager, or other representative of the foreclosing owner responsible for the management of such building, (2) stating the address to which rent and use and occupancy charges shall be sent, and (3) disclosing the tenant's right to a court hearing prior to eviction; (ii) delivers such written notice to each tenant of the housing accommodation by delivering the notice by hand to each residential unit and by sending a copy of the notice by first class mail to each residential unit; and (iii) delivers such written notice to the inspectional

services department, or its equivalent, for the city or town in which the rental housing unit is located:

(a) the tenant has failed to pay the rent in the amount in effect prior to the foreclosure, or has failed to pay the use and occupancy charges in effect prior to the foreclosure, to the foreclosing owner the property after foreclosure, but only if the foreclosing owner has notified the tenant in writing of the amount of rent or use and occupancy charge that was to be paid and to whom it was to be paid;

(b) the tenant has violated an obligation or covenant of the tenancy or occupancy other than the obligation to surrender possession upon proper notice, and has failed to cure such violation within a reasonable time after having received written notice thereof from the foreclosing owner;

(c) the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the unit, or is creating a substantial interference with the quiet enjoyment of other occupants;

(d) the tenant is convicted of a crime an element of which involved using the unit or permitting the unit to be used for any illegal purpose;

(e) the tenant who had a written lease or other rental agreement which terminated on or after the effective date of this chapter, has refused, after written request or demand by the foreclosing owner, to execute a written extension or renewal thereof: (i) for a further term of like duration and (ii) for the same rent as was in effect prior to the foreclosure; provided, however, that the terms of the extension or renewal are not inconsistent with the provisions of this chapter; or

(f) the tenant has refused the foreclosing owner reasonable access to the unit:

(i) for the purpose of making necessary repairs or improvement required by state or federal law, or pursuant to a by-law or ordinance;

(ii) for the purpose of inspection as permitted or required by agreement or by state or federal law; or

(iii) for the purpose of showing the rental housing unit to a prospective purchaser or mortgagee.

“Tenant” a person who at the time of foreclosure is entitled to occupy a housing accommodation pursuant to a written lease or tenancy at will; provided, however, that tenant shall not include a person who: (i) moves into a unit within a housing accommodation owned by the foreclosing owner after the filing of the foreclosure deed; or (ii) occupies the unit without the express written permission of the owner.

“Unit” or “residential unit”, the room or group of rooms within a housing accommodation which is used or intended for use as a residence by one household.

Section 2. Notwithstanding any general or special law to the contrary, a foreclosing owner shall not evict a tenant except (i) for just cause, or (ii) if there is a binding purchase and sale agreement for a bona fide third party to purchase the housing accommodation from a foreclosing owner.

Section 3. Any foreclosing owner that evicts a tenant in violation of any provisions of this chapter shall be punished by a fine of not less than \$10,000. Each eviction in violation of this chapter shall constitute a separate offense.

The district courts, superior courts and housing courts shall have jurisdiction over an action arising from any violation of this chapter, and shall have jurisdiction in equity to restrain any such violation. It shall be a defense to eviction that the foreclosing owner attempted to evict a tenant in violation of any provision of this chapter.

In the event that a foreclosing owner disagrees with the amount of rent or use and occupancy rates that the tenant-at-will or lessee pays to the foreclosing owner, the foreclosing owner may bring a claim in district courts, superior courts or housing court to claim that the rent is unreasonable and to ask the court to set a new use and occupancy rate. The rent agreed to by the foreclosed upon owner and the lessee, as evidenced by an executed lease or proof of rental payment to the foreclosed-upon owner, shall have a presumption of reasonableness.

SECTION 7. Chapter 244 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out Section 35A and inserting in place thereof the following section:-

Section 35A. (a). As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Borrower”, a mortgagor of a mortgage loan.

“Borrower’s representative”, an employee or contractor of a non-profit organization certified by HUD, an employee or contractor of a foreclosure education center pursuant to section 16 of chapter 206 of the acts of 2007, or an employee or contractor of a counseling agency receiving a Collaborative Seal of Approval from the Massachusetts Homeownership Collaborative administered by the Citizens’ Housing and Planning Association.

“Creditor”, any person or entity that holds or controls, partially, wholly, indirectly, directly, or in a nominee capacity, a mortgage loan securing a residential property, including, without

limitation, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder, Mortgage Electronic Registration System, or mortgage servicer. This definition shall also include any servant, employee, or agent of a creditor.

"Creditor's Representative", a person who has the authority to negotiate the terms of and modify a mortgage loan.

"Modified mortgage loan", a mortgage modified from its original terms, including but not limited to a loan modified pursuant to 1 of the following: (i) the Home Affordable Modification Program; (ii) the Federal Deposit Insurance Corporation's Loan Modification Program; (iii) any modification program the lender uses that is based on accepted principles and the safety and soundness of the institution and recognized by the Division of Banks or any other instrumentality of the commonwealth; or (iv) the Federal Housing Agency (FHA); (v) or similar federal refinance plan.

"Mortgage loan", a loan to a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on residential property.

"Net Present Value", The present net value of a residential property based on a calculation using 1 of the following: (i) the federal Home Affordable Modification Program Base Net Present Value Model, (ii) the FDIC Loan Modification Program or (iii) a program administered by the Massachusetts Housing Finance Agency that compares the expected economic outcome of a loan with or without a loan modification.

"Residential property", real property located in the commonwealth having thereon a dwelling house with accommodations for 4 or less separate households and occupied, or to be occupied, in whole or in part by the obligor on the mortgage debt; provided, however, that residential

property shall be limited to the principal residence of a person; provided, further, that residential property shall not include an investment property or residence other than a primary residence.

(b) Any mortgagor of residential property shall have a 150-day right to cure a default of a required payment as provided in the residential mortgage or note secured by the residential property by full payment of all amounts that are due without acceleration of the maturity of the unpaid balance of the mortgage; provided, however, that if a creditor certifies (i) that it has engaged in a good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure as described in subsection (c); (ii) that its good faith effort has involved at least 1 meeting between a creditor's representative with authority to agree to a settlement and the borrower and the borrower's attorney or borrower's representative; and (iii) after such meeting the borrower and the creditor were not successful in resolving their dispute, then the creditor may begin foreclosure proceedings after a right to cure period lasting 90 days. A borrower who fails to respond within 60 days to any mailed communications offering to negotiate and agree upon a commercially reasonable alternative to foreclosure sent via certified and first class mail from the lender forfeits the right to a 150-day right to cure period and shall be subject to a right to cure period lasting said 90 days. Nothing in this section shall prohibit the borrower from affirmatively selecting a 150-day right to cure period instead of meeting with the creditor to negotiate and agree upon a commercially reasonable alternative to foreclosure. The right to cure a default of a required payment shall be granted once during any 3 year period, regardless of mortgage holder.

(c) For purposes of this section, a determination that a creditor has made a good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure shall mean that the creditor has considered: (i) an assessment of the borrower's current circumstances, including, without limitation, the borrower's current income, debts and obligations; (ii) the net

present value of receiving payments pursuant to a modified mortgage loan as compared to the anticipated net recovery following foreclosure; and (iii) the interests of the creditor including, without limitation, the interest of investors and, if the creditor has received funds from the federal government or from the commonwealth, the interest of taxpayers; provided, however, that nothing in this subsection shall be construed as prohibiting a creditor from considering other factors; provided, further, that the creditor must provide by first class and certified mail to borrower documentation of good faith effort 10 days prior to meeting, telephone conversation or meeting pursuant to section (b).

(d) A borrower who receives a loan modification offer from the creditor resulting from the lender's good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure shall respond within 30 days of receipt. A borrower shall be presumed to have responded if the borrower provides: (i) confirmation of a facsimile transmission to the creditor; (ii) proof of delivery through the United States Postal Service or similar carrier; or (iii) record of telephone call to the creditor captured on a telephone bill or PIN register. Failure to respond to the creditor's offer within 30 days of receipt of a loan modification offer results in the borrower forfeiting a 150-day right to cure period and shall be subject to a right to cure period lasting 90 days.

(e) Nothing in this subsection shall prevent a creditor from offering or accepting alternatives to foreclosure, such as a short sale or deed-in-lieu of foreclosure, if the borrower requests such alternatives, rejects a loan modification offered pursuant to this subsection or does not qualify for a loan modification pursuant to this subsection.

(f) Prior to the conclusion of the right to cure period the creditor must certify compliance with this section in an affidavit listing the time and place of the meeting, parties participating, relief offered to the borrower, and a summary of the creditors' net present value analysis and applicable inputs of the analysis and certify modification or any option offered complies with current federal law or policy. A creditor shall provide a copy of the affidavit to the homeowner and also file a copy of the affidavit with the land court in advance of initiating any foreclosure .

(g) The mortgagee, or anyone holding thereunder, shall not accelerate maturity of the unpaid balance of such mortgage obligation or otherwise enforce the mortgage because of a default consisting of the mortgagor's failure to make any such payment in subsection (b) by any method authorized by this chapter or any other law until at least 150 days after the date a written notice is given by the mortgagee to the mortgagor.

Said notice shall be deemed to be delivered to the mortgagor: (i) when delivered by hand to the mortgagor or (ii) when sent by first class mail and certified mail to the mortgagor at the mortgagor's address last known to the mortgagee or anyone holding thereunder.

(h) The notice required in subsection (f) shall inform the mortgagor of the following:--

(1) the nature of the default claimed on such mortgage of residential real property and of the mortgagor's right to cure the default by paying the sum of money required to cure the default;

(2) the date by which the mortgagor shall cure the default to avoid acceleration, a foreclosure or other action to seize the home, which date shall not be less than 150 days after service of the notice and the name, address and local or

267 toll free telephone number of a person to whom the payment or tender shall be
268 made;

269 (3) that, if the mortgagor does not cure the default by the date specified, the
270 mortgagee, or anyone holding thereunder, may take steps to terminate the
271 mortgagor's ownership in the property by a foreclosure proceeding or other action
272 to seize the home;

273 (4) the name and address of the mortgagee, or anyone holding thereunder,
274 and the telephone number of a representative of the mortgagee whom the
275 mortgagor may contact if the mortgagor disagrees with the mortgagee's assertion
276 that a default has occurred or the correctness of the mortgagee's calculation of the
277 amount required to cure the default;

278 (5) the name of any current and former mortgage broker or mortgage loan
279 originator for such mortgage or note securing the residential property;

280 (6) that the mortgagor may be eligible for assistance from the Massachusetts
281 Housing Finance Agency and the division of banks and the local or toll free
282 telephone numbers the mortgagor may call to request this assistance;

283 (7) the mortgagor may sell the property prior to the foreclosure sale and use
284 the proceeds to pay off the mortgage;

285 (8) the mortgagor may redeem the property by paying the total amount due,
286 prior to the foreclosure sale;

287 (9) that the mortgagor may be evicted from the home after a foreclosure sale;

(10) the mortgagor may request from the mortgagee a negotiated agreement to repay the mortgage on terms that are different from or alternative to the original terms of the mortgage, and may request a copy of the mortgage, note, disclosure statement, and payment records; and

(11) an advisory provision for non-English speakers stating, "This is an important notice concerning your right to live in your home. Have it translated at once."; provided, however, that the division of banks shall adopt rules and regulations regarding the translation of such advisory provisions.

(h) To cure a default prior to acceleration under this section, a mortgagor shall not be required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a default. The mortgagor shall pay late fees as allowed pursuant to section 59 of chapter 183 and per-diem interest to cure such default. The mortgagor shall not be liable for any attorneys' fees relating to the mortgagor's default that are incurred by the mortgagee or anyone holding thereunder prior to or during the period set forth in the notice required by this section. The mortgagee, or anyone holding thereunder, may also provide for reinstatement of the note after the 150-day notice to cure has ended.

(i) A copy of the notice required by this section and an affidavit demonstrating compliance with this section shall be filed by the mortgagee, or anyone holding thereunder, in any action or proceeding to foreclose on such residential real property.

(j) A copy of the notice required by this section shall also be filed by the mortgagee, or anyone holding thereunder, with the commissioner of the division of banks. Additionally, if the residential property securing the mortgage loan is sold at a foreclosure sale, the mortgagee, or

anyone holding thereunder, shall notify the commissioner of the division of banks, in writing, of the date of the foreclosure sale and the purchase price obtained at the sale.

SECTION 8. Chapter 244 of the General Laws is hereby amended by striking out section 35A and inserting in place thereof the following section:-

Section 35A. (a) Any mortgagor of residential real property located in the commonwealth consisting of a dwelling house with accommodations for 4 or less separate households and occupied in whole or in part by the mortgagor, shall have a 90-day right to cure a default of a required payment as provided in such residential mortgage or note secured by such residential real property by full payment of all amounts that are due without acceleration of the maturity of the unpaid balance of such mortgage. The right to cure a default of a required payment shall be granted once during any 5 year period, regardless of the mortgage holder.

(b) The mortgagee, or anyone holding thereunder, shall not accelerate maturity of the unpaid balance of such mortgage obligation or otherwise enforce the mortgage because of a default consisting of the mortgagor's failure to make any such payment in subsection (a) by any method authorized by this chapter or any other law until at least 90 days after the date a written notice is given by the mortgagee to the mortgagor.

Said notice shall be deemed to be delivered to the mortgagor: (i) when delivered by hand to the mortgagor or (ii) when sent by first class mail and certified mail to the mortgagor at the mortgagor's address last known to the mortgagee or anyone holding thereunder.

(c) The notice required in subsection (b) shall inform the mortgagor of the following:--

330 (1) the nature of the default claimed on such mortgage of residential real
331 property and of the mortgagor's right to cure the default by paying the sum of
332 money required to cure the default;

333 (2) the date by which the mortgagor shall cure the default to avoid
334 acceleration, a foreclosure or other action to seize the home, which date shall not
335 be less than 90 days after service of the notice and the name, address and local or
336 toll free telephone number of a person to whom the payment or tender shall be
337 made;

338 (3) that, if the mortgagor does not cure the default by the date specified, the
339 mortgagee, or anyone holding thereunder, may take steps to terminate the
340 mortgagor's ownership in the property by a foreclosure proceeding or other action
341 to seize the home;

342 (4) the name and address of the mortgagee, or anyone holding thereunder,
343 and the telephone number of a representative of the mortgagee whom the
344 mortgagor may contact if the mortgagor disagrees with the mortgagee's assertion
345 that a default has occurred or the correctness of the mortgagee's calculation of the
346 amount required to cure the default;

347 (5) the name of any current and former mortgage broker or mortgage loan
348 originator for such mortgage or note securing the residential property;

349 (6) that the mortgagor may be eligible for assistance from the Massachusetts
350 Housing Finance Agency and the division of banks and the local or toll free
351 telephone numbers the mortgagor may call to request this assistance;

352 (7) the mortgagor may sell the property prior to the foreclosure sale and use
353 the proceeds to pay off the mortgage;

354 (8) the mortgagor may redeem the property by paying the total amount due,
355 prior to the foreclosure sale;

356 (9) that the mortgagor may be evicted from the home after a foreclosure sale;

357 (10) the mortgagor may request from the mortgagee a negotiated agreement to
358 repay the mortgage on terms that are different from or alternative to the original
359 terms of the mortgage, and may request a copy of the mortgage, note, disclosure
360 statement, and payment records; and

361 (11) an advisory provision for non-English speakers stating, "This is an
362 important notice concerning your right to live in your home. Have it translated at
363 once."; provided, however, that the division of banks shall adopt rules and
364 regulations regarding the translation of such advisory provisions.

365 (d) To cure a default prior to acceleration under this section, a mortgagor shall not be
366 required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a
367 default. The mortgagor shall pay late fees as allowed pursuant to section 59 of chapter 183 and
368 per-diem interest to cure such default. The mortgagor shall not be liable for any attorneys' fees
369 relating to the mortgagor's default that are incurred by the mortgagee or anyone holding
370 thereunder prior to or during the period set forth in the notice required by this section. The

mortgagee, or anyone holding thereunder, may also provide for reinstatement of the note after the 90 day notice to cure has ended.

(e) A copy of the notice required by this section and an affidavit demonstrating compliance with this section shall be filed by the mortgagee, or anyone holding thereunder, in any action or proceeding to foreclose on such residential real property.

(f) A copy of the notice required by this section shall also be filed by the mortgagee, or anyone holding thereunder, with the commissioner of the division of banks. Additionally, if the residential property securing the mortgage loan is sold at a foreclosure sale, the mortgagee, or anyone holding thereunder, shall notify the commissioner of the division of banks, in writing, of the date of the foreclosure sale and the purchase price obtained at the sale.

SECTION 9. Section 33 of chapter 266 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 5 to 10, inclusive, the words “(2) whoever, with intent to defraud, by a false statement in writing respecting the financial condition, or means or ability to pay, of himself or of any other person, obtains credit from any bank or trust company or any banking institution or any retail seller of goods or services accustomed to give credit in any form whatsoever shall be guilty of larceny” and inserting in place thereof the following words:- (2) whoever, with intent to defraud, by a false statement in writing respecting the financial condition, or means or ability to pay, of himself or of any other person, obtains for himself or for any other person credit from any bank or trust company or any banking institution or any mortgage lender, as defined in section 1 of chapter 255E or any retail seller of goods or services accustomed to give credit in any form whatsoever shall be guilty of larceny.

SECTION 10. Said chapter 266 is hereby further amended by striking out section 34, as so appearing, and inserting in place thereof the following section:--

Section 34. Whoever, with intent to defraud and by a false pretence, induces another to part with property of any kind or with any of the benefits described in sections 33 and 33A shall be guilty of larceny.

SECTION 11. Chapter 266 of the General Laws is amended by inserting after Section 35 the following section:-

Section 35A. (a) As used in this section, the following words shall have the following meanings, unless the context otherwise requires:--

“Funds”, shall include, but not be limited to, a commission, fee, yield spread premium or compensation in any form.

“Material omission”, the omission or concealment of a material fact necessary in order to prevent a statement from being misleading, in the light of the circumstances under which the statement is made.

“Mortgage lending process”, the process through which a person seeks or obtains a residential mortgage loan including, but not limited to, solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan; provided, however, that documents involved in the mortgage lending process shall include, but not be limited to: uniform residential loan applications or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications

such as W-2 forms, verification of income and employment, bank statements, tax returns and payroll stubs; and any required disclosures.

“Pattern of residential mortgage fraud”, the violation of subsection (b) in connection with 3 or more residential properties.

“Person”, a natural person, corporation, company, limited liability company, partnership, real estate trust, association or any other entity.

“Residential mortgage loan”, a loan or agreement to extend credit made to a person, which loan is secured by a mortgage, security interest, deed to secure debt, deed of trust, or other document representing a security interest or lien upon any interest in a 1- to-4 family residential property located in the commonwealth, including the renewal or refinancing of any such loan.

(b) Whoever intentionally:

(1) makes or causes to be made any material statement that is false or any statement that contains a material omission, knowing the same to be false or to contain a material omission, during or in connection with the mortgage lending process, with the intent that such statement be relied upon by a mortgage lender, borrower or any other party to the mortgage lending process;

(2) uses, or facilitates the use of, any material statement that is false or any statement that contains a material omission, knowing the same to be false or to contain a material omission, during or in connection with the mortgage lending process, with the intent that such statement be relied upon by a mortgage lender, borrower or any other party to the mortgage lending process;

(3) receives any proceeds or any other funds in connection with a residential mortgage closing, knowing such proceeds or funds were obtained in violation of clause (1) or (2); or

(4) files or causes to be filed with a registrar of deeds any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission, shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 ½ years or by a fine of not more than \$10,000 in the case of a natural person or not more than \$100,000 in the case of any other person, or by both such fine and imprisonment.

Any person who engages in a pattern of residential mortgage fraud shall be punished by imprisonment in the state prison for not more than 15 years or by a fine of not more than \$50,000, in the case of a natural person, or not more than \$500,000 in the case of any other person, or by both such fine and imprisonment.

(c) Any violation of this section may be prosecuted and punished in any of the following:

(1) the county in which the residential property for which a mortgage loan is being sought is located;

(2) the county in which any act was performed in furtherance of the violation;

(3) the county in which any person alleged to have violated this section had control or possession of any proceeds of, or other funds received as a result of the violation;

455 (4) the county in which a closing on the mortgage loan occurred; or

456 (5) the county in which a document containing a deliberate misstatement,
457 misrepresentation or omission is filed with a registrar of deeds.

458 (d) If a defendant is charged with a violation of this section as a result of conduct or an
459 omission by an employee or agent of the defendant the court may consider the following
460 mitigating factors:

461 (1) the defendant had, at the time of the violation, and continues to have, a
462 written policy that includes:

463 (i) a prohibition against conduct that violates this section by employees
464 and agents of the defendant;

465 (ii) penalties or discipline for violation of the policy;

466 (iii) a process for educating employees and agents concerning the policy
467 and consequences of a violation; and

468 (iv) a requirement for a criminal history check before employing an
469 employee or engaging an agent and a requirement that the defendant will
470 not employ or engage an individual who has been convicted of a crime
471 involving fraud;

472 (2) the defendant demonstrates that it enforces the written policy described in
473 clause (1); and

(3) prior to the violation of this section the defendant provided a copy of the written policy described in clause (1), including a description of the consequences for violating the policy, to the employee or agent who committed the violation.

(e) It shall be a rebuttable presumption that a borrower in the residential mortgage lending process did not make a false material statement or a material omission. Two or more separate incidents or occurrences of fraud shall be sufficient to overcome this rebuttable presumption.

SECTION 12: Notwithstanding any general or special law to the contrary, the attorney general shall establish a 2-year pilot program to implement a “Massachusetts abandoned property registry”, hereinafter referred to as MAP. Such registry shall require all property owners, including lenders, trustees, and service companies, to properly register and maintain vacant or foreclosing properties located in the commonwealth.

The attorney general shall have enforcement authority of the pilot program, including, but not limited to, the authority to impose civil assessments. The attorney general shall adopt rules and regulations governing the implementation and administration of the MAP pilot program.

SECTION 13. The attorney general shall adopt the rules and regulations required in section 12 not later than 120 days after the effective date of this act.

SECTION 14. Sections 2, 3, 4 and 5 shall take effect within 90 days of passage of this act.

SECTION 15. Section 8 shall take effect on January 1, 2016.